

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JIMMY TOBIAS,)	
1336 N Cranbrook Rd.)	
Bloomfield Village, MI 48301)	
)	
Plaintiff,)	
)	
v.)	
)	
U.S. DEPARTMENT OF INTERIOR,)	
OFFICE OF THE SECRETARY,)	
1849 C Street NW)	
Washington, DC 20240)	
)	
Defendant.)	

COMPLAINT

1. Plaintiff JIMMY TOBIAS brings this suit to overturn Defendant UNITED STATES DEPARTMENT OF INTERIOR, OFFICE OF THE SECRETARY's failure to timely respond to TOBIAS' FOIA requests.

PARTIES

2. Plaintiff JIMMY TOBIAS is an independent reporter with The Guardian and The Nation, among other media outlets, and is the FOIA requester in this case.

3. Defendant DEPARTMENT OF INTERIOR, OFFICE OF THE SECRETARY (DOI) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because this District is always a permissible venue for federal FOIA suits.

DECEMBER 20, 2018 REQUEST (BERNHARDT SWIFT)

6. On December 20, 2018, TOBIAS submitted a FOIA request to DOI: “[a]ll electronic correspondence, including email attachments and text messages, between David Bernhardt and Heather Swift. This request seeks records produced between January 1, 2018 and the date this request is processed.” Exhibit A.

7. On December 21, 2018, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00305. In that same response, DOI took a 10-day extension. Exhibit B.

8. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit A.

9. As of the date of filing, DOI has not responded and has produced no responsive records.

DECEMBER 26, 2018 FIRST REQUEST (CASSIDY NRA)

10. On December 26, 2018, TOBIAS submitted a FOIA request to DOI: “[a]ny written or electronic communications, including email attachments and text messages, between Benjamin Cassidy (or his executive staff) and any agent, representative, employee or official of the National Rifle Association, including NRA employee Susan Recce. This request seeks records produced between October 1, 2017 and the date this request is processed.” Exhibit C.

11. On January 23, 2019, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00325. In that same response, DOI took a 10-day extension. Exhibit D.

12. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit C.

13. As of the date of filing, DOI has not responded and has produced no responsive records.

DECEMBER 26, 2018 SECOND REQUEST (DOMENECH CLIMATE)

14. On December 26, 2018, TOBIAS submitted a FOIA request to DOI: “[a]ny and all electronic correspondence, including email attachments, group chats and text messages, sent or received by Douglas Domenech that contain one or more of the following key words: ‘climate change,’ ‘global warming,’ ‘carbon emissions,’ and/or ‘greenhouse.’ This request seeks records from January 1, 2018 to the date this request is processed.” Exhibit E.

15. On January 24, 2019, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00338. In that same letter, DOI took a 10-day extension. Exhibit F.

16. Over the next couple months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit E.

17. As of the date of filing, DOI has not responded and has produced no responsive records.

JANUARY 24, 2019 REQUEST (BERNHARDT FOIA)

18. On January 24, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny written or electronic communications (including memos, power points, emails, email attachments, or text messages) sent or received by David Bernhardt that contain one or more of the following words or phrases: ‘FOIA,’ ‘Freedom of information act,’ ‘43 CFR 2,’ and/or ‘DOI-2018-0017.’”

This request seeks records produced between August 1, 2018 and the date this request is processed.” Exhibit G.

19. On January 25, 2019, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00379. In that same response, DOI took a 10-day extension. Exhibit H.

20. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit G.

21. As of the date of filing, DOI has not responded and has produced no responsive records.

JANUARY 28, 2019 REQUEST (MACGREGOR IAGC)

22. On January 28, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny and all written or electronic communications, including attachments, between Katharine MacGregor (or her executive staff) and any agent, official, representative or employee of the International Association of Geophysical Contractors, an industry trade group with business before the Department of Interior. This request seeks records produced between December 1, 2018 and the date this request is processed.” Exhibit I.

23. On January 30, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00385. In that same response, DOI took a 10-day extension. Exhibit J.

24. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit I.

25. As of the date of filing, DOI has not responded and has produced no responsive records.

FEBRUARY 7, 2019 REQUEST (WILLENS BHFS)

26. On February 7, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny electronic communications, including email attachments and text messages, sent or received by Todd Willens that contain one or more of the following words or phrases: ‘BHFS,’ and/or ‘Brownstein Hyatt Farber Schreck.’ This request seeks records produced between September 1, 2018, and the date this request is processed.” Exhibit K.

27. On February 12, 2019, DOI acknowledged receipt of the request and assigned the following control number to the request: OS-2019-00466. In that same response, DOI took a 10-day extension. Exhibit L.

28. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit K.

29. As of the date of filing, DOI has not responded and has produced no responsive records.

FEBRUARY 25, 2019 FIRST REQUEST (MASHBURN HERITAGE)

30. On February 25, 2019, TOBIAS submitted a FOIA request to DOI seeking the following: “Any written or electronic communications, including text messages and email attachments, sent or received by Lori Mashburn that contain one or more of the following words or phrase: ‘Heritage Foundation’ and/or ‘Heritage.’ This request seeks records produced between July 1, 2018, and the date this request is processed.” Exhibit M.

31. On February 26, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00517 (Mashburn Heritage). In that same response, DOI took a 10-day extension. Exhibit N.

32. In the response, DOI classified TOBIAS as an “other-use” requester even though he identified himself as a journalist in the original request. Exhibit N.

33. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit M.

34. As of the date of filing, DOI has not responded and has produced no responsive records.

FEBRUARY 25, 2019 SECOND REQUEST (WILLENS CALENDAR)

35. On February 25, 2019, TOBIAS submitted a FOIA request to DOI: “[t]he official calendar, work itinerary, and/or briefing binder for Todd Willens from May 3, 2018 to the date this request is processed.” Exhibit O.

36. On February 26, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: and OS-2019-00519 (Willens Calendar). In that same response, DOI took a 10-day extension. Exhibit N.

37. In the response, DOI classified TOBIAS as an “other-use” requester even though he identified himself as a journalist in the original request. Exhibit N.

38. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit O.

39. As of the date of filing, DOI has not responded and has produced no responsive records.

MARCH 18, 2019 FIRST REQUEST (COMBS OIL AND GAS 1)

40. On March 18, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny written or electronic communications, including email attachments between Susan Combs and any agent, official, representative or employee of one or more of the following organizations: the Western

Energy Alliance, the Texas Public Policy Foundation, the Independence Institute, the American Petroleum Institute, the State Policy Network, and/or the Texas Oil and Gas Association.” Exhibit P.

41. On March 19, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00591. In that same response, DOI took a 10-day extension. Exhibit Q.

42. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit P.

43. As of the date of filing, DOI has not responded and has produced no responsive records.

MARCH 18, 2019 SECOND REQUEST (WILLENS GROUSE)

44. On March 18, 2019, TOBIAS submitted a FOIA request to DOI: “any electronic communications, including email attachments and text messages, sent or received by Todd Willens that contain one or more of the following words or phrases: ‘sage grouse,’ ‘grouse,’ ‘Western Energy Alliance,’ ‘WEA,’ and/or ‘Benedetto.’ This request seeks records produced between August 1, 2018 and the date this request is processed.” Exhibit R.

45. On March 19, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00589. In that same response, DOI took a 10-day extension. Exhibit S.

46. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit R.

47. As of the date of filing, DOI has not responded and has produced no responsive records.

MARCH 22, 2019 REQUEST (TOBIAS COMMS)

48. On March 22, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny electronic communications, including attachments, sent or received by Daniel Jorjani, David Bernhardt, Katharine MacGregor, Joe Balash, Heather Swift, Faith Vander Voort, Douglas Domenech, Timothy Williams, Susan Combs, Benjamin Cassidy, and/or Rachel Spector that contain one or more of the following names or words: ‘Tobias,’ ‘Guardian,’ and/or ‘Pacific Standard.’” Exhibit T.

49. On March 25, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00615. In that same response, DOI took a 10-day extension. Exhibit U.

50. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit T.

51. As of the date of filing, DOI has not responded and has produced no responsive records.

APRIL 8, 2019 REQUEST (BERNHARDT DAILY CARD 5)

52. On April 8, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny and all records (including email attachments, Google Documents and handwritten notes) related to David Bernhardt’s April 13, 2018 meeting titled ‘BLM – Shooting Range Policy.’ More information about this meeting can be found in Mr. Bernhardt’s so-called ‘daily card’ for the date listed above. This request also seeks records related to other participants at the meeting, including their names and titles.” Exhibit V.

53. On April 11, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00706. In that same response, DOI took a 10-day extension. Exhibit W.

54. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit V.

55. As of the date of filing, DOI has not responded and has produced no responsive records.

APRIL 8, 2019 REQUEST (BERNHARDT DAILY CARD 4)

56. On April 8, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny and all records (including email attachments, Google Documents and handwritten notes) related to David Bernhardt’s participation in ‘Weekly CA Water Calls.’ These calls – which refer to phone calls concerning water policy in California – are frequently listed on Mr. Bernhardt’s work itinerary and daily cards. This request seeks record produced between August 1, 2018 and the date this request is processed.” Exhibit X.

57. On April 10, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00697. In that same response, DOI took a 10-day extension. Exhibit Y.

58. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit X.

59. As of the date of filing, DOI has not responded and has produced no responsive records.

APRIL 16, 2019 REQUEST (COMBS OIL AND GAS 2)

60. On April 16, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny correspondence, including email attachments, between Susan Combs and any individual with an email that ends in one of the following addresses: @api.org, @coga.org, @chk.com, @carrizo.com, @murphyoilcorp.com, conocophillips.com, @marathonoil.com, and/or @phillips66.com. This request seeks records between March 1, 2018 and the date this request is processed.” Exhibit Z.

61. On April 17, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00742. In that same response, DOI took a 10-day extension. Exhibit AA.

62. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit Z.

63. As of the date of filing, DOI has not responded and has produced no responsive records.

JUNE 19, 2019 REQUEST (COMBS TPPF)

64. On June 19, 2019, TOBIAS submitted a FOIA request to DOI: “[a]ny emails, notes, scheduling information, planning documents, agendas, memos, or other documentation associated with Susan Combs’ August 21, 2018 meeting or phone call with Rob Henneke, of the Texas Public Policy Foundation.” Exhibit BB.

65. On June 19, 2019, DOI acknowledged receipt of the requests and assigned the following control number to the request: OS-2019-00988. In that same response, DOI took a 10-day extension. Exhibit CC.

66. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never responded. Exhibit BB.

67. As of the date of filing, DOI has not responded and has produced no responsive records.

COUNT I – DOI’S DECEMBER 20, 2018 (BERNHARDT SWIFT) VIOLATION OF FOIA

68. The above paragraphs are incorporated by reference.

69. Defendant DOI is an agency subject to FOIA.

70. The requested records are not exempt under FOIA.

71. DOI has refused to produce the requested records in a timely manner.

COUNT II – DOI’S DECEMBER 26, 2018 (CASSIDY NRA) VIOLATION OF FOIA

72. The above paragraphs are incorporated by reference.

73. Defendant DOI is an agency subject to FOIA.

74. The requested records are not exempt under FOIA.

75. DOI has refused to produce the requested records in a timely manner.

COUNT III – DOI’S DECEMBER 26, 2018 (DOMENECH CLIMATE) VIOLATION OF FOIA

76. The above paragraphs are incorporated by reference.

77. Defendant DOI is an agency subject to FOIA.

78. The requested records are not exempt under FOIA.

79. DOI has refused to produce the requested records in a timely manner.

COUNT IV – DOI’S JANUARY 24, 2019 (BERNHARDT FOIA) VIOLATION OF FOIA

80. The above paragraphs are incorporated by reference.

81. Defendant DOI is an agency subject to FOIA.

82. The requested records are not exempt under FOIA.

83. DOI has refused to produce the requested records in a timely manner.

COUNT V – DOI’S JANUARY 28, 2019 (MACGREGOR IAGC) VIOLATION OF FOIA

84. The above paragraphs are incorporated by reference.

85. Defendant DOI is an agency subject to FOIA.

86. The requested records are not exempt under FOIA.

87. DOI has refused to produce the requested records in a timely manner.

COUNT VI– DOI’S FEBRUARY 7, 2019 (WILLENS BHFS) VIOLATION OF FOIA

88. The above paragraphs are incorporated by reference.

89. Defendant DOI is an agency subject to FOIA.

90. The requested records are not exempt under FOIA.

91. DOI has refused to produce the requested records in a timely manner.

COUNT VII – DOI’S FEBRUARY 25, 2019 (MASHBURN HERITAGE) VIOLATION OF FOIA

92. The above paragraphs are incorporated by reference.

93. Defendant DOI is an agency subject to FOIA.

94. The requested records are not exempt under FOIA.

95. DOI has refused to produce the requested records in a timely manner.

COUNT VIII– DOI’S FEBRUARY 25, 2019 (WILLENS CALENDAR) VIOLATION OF FOIA

96. The above paragraphs are incorporated by reference.

97. Defendant DOI is an agency subject to FOIA.

98. The requested records are not exempt under FOIA.

99. DOI has refused to produce the requested records in a timely manner.

COUNT IX – DOI’S MARCH 18, 2019 (COMBS OIL AND GAS 1) VIOLATION OF FOIA

- 100. The above paragraphs are incorporated by reference.
- 101. Defendant DOI is an agency subject to FOIA.
- 102. The requested records are not exempt under FOIA.
- 103. DOI has refused to produce the requested records in a timely manner.

COUNT X – DOI’S MARCH 18, 2019 (WILLENS GROUSE) VIOLATION OF FOIA

- 104. The above paragraphs are incorporated by reference.
- 105. Defendant DOI is an agency subject to FOIA.
- 106. The requested records are not exempt under FOIA.
- 107. DOI has refused to produce the requested records in a timely manner.

COUNT XI – DOI’S MARCH 22, 2019 (TOBIAS COMMS) VIOLATION OF FOIA

- 108. The above paragraphs are incorporated by reference.
- 109. Defendant DOI is an agency subject to FOIA.
- 110. The requested records are not exempt under FOIA.
- 111. DOI has refused to produce the requested records in a timely manner.

COUNT XII – DOI’S APRIL 8, 2019 (BERNHARDT DAILY CARD 5) VIOLATION OF FOIA

- 112. The above paragraphs are incorporated by reference.
- 113. Defendant DOI is an agency subject to FOIA.
- 114. The requested records are not exempt under FOIA.
- 115. DOI has refused to produce the requested records in a timely manner.

COUNT XIII – DOI’S APRIL 8, 2019 (BERNHARDT DAILY CARD 4) VIOLATION OF FOIA

- 116. The above paragraphs are incorporated by reference.

117. Defendant DOI is an agency subject to FOIA.

118. The requested records are not exempt under FOIA.

119. DOI has refused to produce the requested records in a timely manner.

COUNT XIV – DOI’S APRIL 16, 2019 (COMBS OIL AND GAS 2) VIOLATION OF FOIA

120. The above paragraphs are incorporated by reference.

121. Defendant DOI is an agency subject to FOIA.

122. The requested records are not exempt under FOIA.

123. DOI has refused to produce the requested records in a timely manner.

COUNT XV – DOI’S JUNE 19, 2019 (COMBS TPPF) VIOLATION OF FOIA

124. The above paragraphs are incorporated by reference.

125. Defendant DOI is an agency subject to FOIA.

126. The requested records are not exempt under FOIA.

127. DOI has refused to produce the requested records in a timely manner.

WHEREFORE, Plaintiff asks the Court to:

- i. Order Defendant to produce the requested records;
- ii. Award Plaintiff attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

Dated: September 9, 2019

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

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